

could be put off until later this year when the contract (under Bell Atlantic's view) expires. Its continued effectiveness would then be subject to dispute, and that dispute would be subject to resolution by the Commission if the parties themselves could not resolve it. On the other hand, Global NAPs believes that the better way to approach this issue is that it relates to what it means to get "the same" terms and conditions that MFS got. As described below, on the face of the MFS Agreement, it is plainly a "three year" contract.

4. The MFS Agreement Is A Three-Year Deal

The MFS Agreement runs for approximately three years, from July 1996 through July 1, 1999.⁶ Bell Atlantic, however, contends that the MFS Agreement is not — despite appearances — a three-year deal. To support this position, moreover, Bell Atlantic argues that, if the agreement has a three-year term, this would bind Bell Atlantic to the terms of that agreement forever, as CLEC after CLEC opts into it in a never-ending chain.

Bell Atlantic is wrong on both counts. First, the effect of Bell Atlantic's position is that Global NAPs is only entitled to an agreement that will run for approximately five-and-one-half months (at best, January 1999 through June 1999). As described below, however, treating the agreement as having a five-and-one-half month term would eviscerate many of the agreement's substantive provisions. A five-and-one-half month deal, therefore, *cannot* be an agreement that provides Global NAPs with interconnection with Bell Atlantic "upon the same terms and conditions as those provided in the [MFS] agreement," and so cannot comply with Section 252(i).

Second, even though the MFS Agreement is indeed inherently a three-year deal, that does not mean that Bell Atlantic is stuck with it forever. To the contrary, Bell Atlantic must comply with the MFS Agreement only as long as its terms are "nondiscriminatory" and

⁶ See New Matter Item #1 (complete copy of MFS Agreement), Preamble (page 1) (defining July 16, 1996 as the "Effective Date") and signature block preamble (page 63) (indicating the agreement was effective as of "this 16th day of July, 1996"); *id.*, Section 22.1 (stating that the agreement "continues in effect until" July 1, 1999).

"consistent with the public interest, convenience and necessity," *see* 47 U.S.C. § 252(e)(2)(A). By approving the MFS Agreement, the Commission found that the terms of that agreement meet the statutory standard.^y If Bell Atlantic can prove to the Commission in an open and appropriate proceeding that they no longer do so, the Commission could issue an order relieving Bell Atlantic of any further obligation to make the MFS Agreement available for opting in under Section 252(i). Bell Atlantic, however, has not made (and in this proceeding cannot make) such a showing.

a. Many Substantive Provisions Of The MFS Agreement Inherently Contemplate A Three-Year Term.

Setting up interconnection arrangements between two telecommunications networks costs money and takes time. Specific interconnection locations have to be agreed upon. Traffic forecasts have to be developed and reviewed. Equipment and communication links have to be ordered, shipped, received, installed and tested.

The MFS Agreement recognizes the fact that things take time in various ways that are integral to the operation of the substantive provisions of the contract. First and foremost, the agreement on its face runs for a three-year period (from July 16, 1996 through July 1, 1999). This three-year term gives both parties the ability to make and implement business decisions — including decisions that can involve purchasing millions of dollars of telecommunications equipment — within a stable contractual environment.

Other material provisions of the agreement also show that it is intended to have a three-year term. These are discussed below in some detail because — since they come from the MFS Agreement itself — they provide the best possible evidence of how the parties intended for the agreement to operate.⁷ Each of these provisions is a material aspect of the "terms and

⁷ The analysis below, based on the terms of the MFS Agreement, is inherently probative of the meaning of that agreement. Indeed, the agreement, by its terms, does not permit consideration of any evidence outside of its own four corners. Section 29.17 states that the terms of the written agreement
(continued...)

conditions" in the agreement — provisions which Global NAPs will be denied if it is forced to accept a five-and-one-half-month term.

- **Schedule 3.0.** Section 3.0 refers to Schedule 3.0, which is about 3 pages behind the signature page. This Schedule establishes implementation "Milestones" over an approximately three-month period from the "LATA Start Date" to the "Interconnection Activation Date," *i.e.*, the date when interconnection has actually been established. Schedule 3.0, therefore, necessarily contemplates that the agreement will continue for a substantial period of time beyond the three months allotted to get physical interconnection arrangements up and running. In these circumstances it would be senseless to conclude that MFS and Bell Atlantic thought that they were entering into a agreement that had a term of only five-and-one-half months. Yet that is exactly the position that Bell Atlantic appears to be taking here.
- **Section 4.1.2 and Section 4.3.1.** Section 4.1.2 states that, until a particular type of system contemplated by the agreement (a "SONET" system, defined in Section 1.67) is established "in accordance with subsection 4.3 ... the Parties agree to adopt an *initial* interconnection architect[ure]." Section 4.3 is entitled "*Initial* Architecture," and states that the parties shall provide for certain specified "*initial* interconnection arrangements ... for a period of no more than *eighteen (18) months* after the *later* of the Effective Date and the LATA Start Date set forth for the LATA in Schedule 3.0." This section, therefore, inherently assumes that it takes an extended period of time to establish interconnection arrangements, and expressly allows a period of *one-and-one-half years* for an "initial" arrangement to be in effect. It is impossible to square this provision with the five-and-one-half-month term Bell Atlantic claims is all that Global NAPs is entitled to now.
- **Section 10.1.** Section 10.1 requires the parties to meet to establish a "Joint Plan" regarding various technical aspects of their interconnection arrangements. This plan is to be developed by "December 1, 1996." The plan, moreover, is to deal with (among other items) the "actual meet point locations on the SONET system" referred to above, that would not be in place for *eighteen months* following execution of the agreement.

This illustrates two points. First, it is impossible for any new CLEC (such as Global NAPs) to develop a "Joint Plan" with Bell Atlantic by December 1, 1996. That date has

⁷(...continued)

"constitute the *entire agreement* between the Parties with respect to the subject matter hereof, *superseding all prior understandings, proposals or other communications, oral or written.*" The agreement, in short, speaks for itself and is the sole authoritative source for the intentions of MFS and Bell Atlantic in entering into it. In these circumstances, not only is there no need for evidentiary hearings on the topic of the term of the agreement, such hearings would be inappropriate.

already passed, which shows that the specific dates listed in the agreement need to be adjusted to reflect when the new, opted-into agreement is executed.

Second, the agreement plainly must continue well beyond the (now) five-and-one-half month period that would apply under Bell Atlantic's logic. This is because it would be senseless to spend four-and-one-half months (the time from the July 16, 1996 "Effective Date" to the December 1, 1996 date for completing the plan) of an five-and-one-half-month term to develop an implementation plan, part of which relates to the implementation of SONET architecture eighteen months later.

- **Section 10.3.** Section 10.3 requires the CLEC to "provide Bell Atlantic a one (1) year traffic forecast." Moreover, this "initial" forecast "shall be updated and provided to Bell Atlantic on a quarterly basis," *i.e.*, the CLEC is required, each quarter, to forecast traffic for the following twelve-month period. This provision makes no sense if, as Bell Atlantic contends, the agreement that Global NAPs would execute would only have a five-and-one-half-month term.
- **Section 14.5.2.** Section 14.5 relates to the payment of terminating compensation in connection with a particular class of calls: calls to telephone numbers that were originally assigned to Bell Atlantic customers but that are retained by those customers after they have become CLEC customers, using "interim" number portability to allow the number to be retained. Section 14.5.2 requires that terminating compensation payments applicable to calls to such numbers be based on certain estimates.

These estimates are significant here in two respects. First, the initial estimate is to be made by "the Interconnection Activation Date in each LATA." These are dates included in "Schedule 3.0" (*See* Section 3.1 of the contract). The contract contemplates that these milestones will be worked out by the parties as part of the contract itself. Note that each estimate referred to in Section 14.5.2 is supposed to cover "the prospective six months," *i.e.*, the six month period *following* the date of the estimate, "based on historic data of all traffic in the LATA." It would make no sense to provide a "prospective six month" estimate based on historical data in an agreement that only had a term of five-and-one-half-months.

Second, Section 14.5.2 directs the parties to establish new estimates "[o]n the date which is six months *after* the Interconnection Activation Date and *thereafter* on *each succeeding* six month anniversary of such Interconnection Activation Date." In an agreement with a three-year term, this requirement to produce estimates every six months is perfectly sensible. In a five-and-one-half-month agreement of the sort that Bell Atlantic seeks to impose on Global NAPs, this requirement is senseless.

- **Section 27.2.** This section relates to certain performance standards for Bell Atlantic. A type of performance failure of particular concern is a "Specified Performance Breach" (defined in Section 27.1.1). Under Section 27.2, if Bell Atlantic commits a Specified Performance Breach "during the term of this Agreement," the parties will meet to discuss

the need for an amendment to the agreement to provide for liquidated damages; the question of a liquidated damages term will be arbitrated if they cannot agree whether one is justified.

But Section 27.2 contains an exception: "if Bell Atlantic commits a Specified Performance Breach during [the] *initial* nine (9) months of this Agreement, the parties agree to meet at the *end* of the nine-month period." If, as Bell Atlantic now claims, Global NAPs is required to accept a five-and-one-half-month deal, the entire provision regarding establishing a liquidated damages clause is ineffective. It is also nonsensical to refer to the "initial nine (9) months" of an agreement that terminates in five and one-half months.

- **Section 27.5.** This section requires both parties to keep certain records "of Bell Atlantic's performance under this Agreement ... and its compliance with the Performance criteria during the *initial* nine-month-period." As with Section 27.2, it is nonsensical to refer to the "initial nine-month period" of a five-and-one-half-month contract.
- **Exhibit A.** Exhibit A to the agreement (beginning about 10 pages following the signature page) establishes the prices of the services that Bell Atlantic and MFS will provide to each other. It is divided into prices for "Bell Atlantic Services, Facilities and Arrangements" (the first 8 pages of the Exhibit) and "MFS Services, Facilities and Arrangements" (the next 3 pages). Item 13.a under "Bell Atlantic Service" is the rate for "Reciprocal call termination" that will apply to calls delivered by MFS to Bell Atlantic. Item 3.a. under "MFS Service" is the rate for "Reciprocal call termination" that will apply to calls delivered by Bell Atlantic to MFS.

In each case, the rate is \$0.009 per minute during the "First year" and a blended rate (set pursuant to a formula in note 13 to the Exhibit) "After first year." These provisions (as well as the formula in note 13) plainly contemplate an agreement that will have not only a "first year," but also at least two subsequent years. Indeed, Section B.1 of note 13 requires MFS's charges to Bell Atlantic to be "recalculated once *each year* on *each* anniversary of the Effective Date," and indicates that the "*initial*" recalculation "shall be the *first* anniversary of the Effective Date."

This key, material provision — how much each party will get paid for terminating traffic from the other party — inherently reflects a term that will permit there to be at least *two* "anniversary dates" of the "Effective Date." This arrangement is impossible in a five-and-one-half-month agreement of the type Bell Atlantic is now trying to foist on Global NAPs. It is, however, directly consistent with a three-year agreement of the type that Bell Atlantic actually provided to MFS and that Global NAPs wants to opt in to.

The discussion above shows that numerous substantive, material terms of the MFS Agreement would simply make no sense if, as Bell Atlantic claims, it can force Global NAPs to

accept the "same" agreement, but with a five-and-one-half-month term. The discussion shows, in other words, that a five-and-one-half-month version of the MFS Agreement is not the "same" agreement at all, because a five-and-one-half-month agreement would not give Global NAPs interconnection with Bell Atlantic "upon the same terms and conditions as those provided in the agreement" with MFS, as required by 47 U.S.C. § 252(i).⁸

b. Bell Atlantic Is Not Trapped Forever By The Terms Of The MFS Agreement.

Bell Atlantic's objection to the seemingly obvious conclusion that the MFS Agreement has a three year term is that if the specific termination date in the MFS Agreement is not treated as inviolate for purposes of Section 252(i), Bell Atlantic will always be subject to the terms of its deal with MFS, since one CLEC after another could choose to "opt in" to the MFS Agreement, year after year, forever. This objection is baseless.

At the outset, recall that the only reason that the MFS Agreement is available for opting into at all is that the Commission has affirmatively found that agreement to be consistent with the standard in Section 252(e)(2)(A), *i.e.*, to be "non-discriminatory and consistent with the public interest, convenience, and necessity."⁹ As long as that Commission finding remains in effect, there nothing wrong with requiring Bell Atlantic to apply the terms of the MFS Agreement to CLECs that choose to opt into it, in each case for three-year terms. Indeed, as long as that Commission finding remains in effect, it would be odd to conclude that — *despite* the fact that the MFS Agreement is "non-discriminatory and consistent with the public interest, convenience, and necessity" — CLECs could *not* opt into it.

⁸ Based on an analysis of the contract between MFS and Bell Atlantic in New Jersey, the arbitrator in New Jersey concluded that Global NAPs was indeed entitled to a contract with Bell Atlantic with a term of approximately three years. A copy of the New Jersey Arbitrator's recommended decision is attached as New Matter Item # 2.

⁹ See Application of MFS Intelenet of Pennsylvania, Inc., In Re: Joint Petition of Bell Atlantic-Pennsylvania, Inc. and MFS Intelenet of Pennsylvania, Inc. for Approval of Agreement for Network Interconnection and Resale, Docket No. A-310203F0002, 1996 Pa. PUC LEXIS 197 (October 3, 1996) (approving negotiated agreement between Bell Atlantic and MFS).

The fact that the MFS Agreement has been approved also provides the answer to Bell Atlantic's fears that it might have to abide by that agreement even if conditions have changed in a material way. If Bell Atlantic believes that the terms of the MFS Agreement have *become* "discriminatory" or *inconsistent* "with the public interest, convenience, and necessity," Bell Atlantic is free to try to persuade the Commission of its view. If the Commission were to be persuaded, then *the Commission itself* would issue an order stating that it will not approve any subsequent CLEC efforts to opt in to the MFS Agreement, because of *the Commission's* finding that such agreements no longer meet the standard for approval contained in 47 U.S.C. § 252(e)(2)(A).

Bell Atlantic, in short, has a clear and simple means for ensuring that it cannot be forever subject to the terms of an agreement that has become unreasonable due to changed circumstances or the simple passage of time. But it is the Commission, not Bell Atlantic, that is responsible for making this determination.¹⁰

* * * * *

The discussion above shows that the only way that Global NAPs can obtain interconnection with Bell Atlantic "upon the same terms and conditions as those provided in the agreement" with MFS, 47 U.S.C. § 252(i), is by giving Global NAPs a three-year deal, and that Bell Atlantic's objections to doing so are baseless. The easiest way to implement a three-year deal for Global NAPs is to adjust the specific dates in the contract forward by approximately 30

¹⁰ The Commission probably has inherent authority to consider this question as part of its duties to approve interconnection agreements under 47 U.S.C. § 252(e). In addition, it also has sufficient authority to take such action under Pennsylvania law. The Commission cannot exercise its state law authority in a manner contrary to federal law, but it would not contravene federal law for the Commission to recognize changed circumstances in an order issued after notice to all affected parties and consideration of relevant evidence. Such a proceeding would be, in effect, a generic proceeding regarding the application of the terms of Section 252(e)(2)(A), in the same way that the Commission's general investigation of Bell Atlantic's costs led to a generic order regarding the application of the pricing terms of Section 252(d).

months.¹¹ Global NAPs respectfully requests that the Arbitrator issue a ruling directing Bell Atlantic and Global NAPs to execute such an agreement.

5. Conclusion.

Bell Atlantic is resisting Global NAPs' entry into the market because Bell Atlantic knows that Global NAPs has found an effective way to compete in the marketplace. Bell Atlantic, like many ILECs, has historically not provided good service to a particular specialized customer group — ISPs. Global NAPs has focused its market entry strategy on how to effectively serve these customers. Bell Atlantic has chosen not to respond with better specialized customer service of its own. To the contrary, Bell Atlantic has chosen to respond with the traditional monopolistic tactic of regulatory obfuscation and delay.

Bell Atlantic and Global NAPs indeed have a number of disagreements about the proper regulatory treatment of calls to ISPs. But whether dial-up connections to ISPs are purely intrastate local calls (as some state commissions have ruled) or, instead, a specialized form of interstate access service (as Bell Atlantic has contended to the FCC and elsewhere), providing those connections is a function of a local exchange carrier. Global NAPs is trying to compete with Bell Atlantic as a local exchange carrier. All Bell Atlantic is doing is trying to keep Global

¹¹ This would result in three changes: (1) the "Effective Date" would change from July 16, 1996, to February 1, 1999; (2) the date by which the jointly developed "grooming plan" in Section 10.1 would be completed would change from December 1, 1996 to June 1, 1999; (3) the termination date in Section 22.1 would change from July 1, 1999 to January 15, 2002.

NAPs from doing so. Neither the provisions nor the policies of the Telecommunications Act of 1996, nor any statutes or policies of the Commonwealth of Pennsylvania support such a result.

For the foregoing reasons, therefore, Global NAPs respectfully requests that the Administrative Law Judge (1) deny Bell Atlantic's Motion to Dismiss and (2) grant Global NAPs' Motion for Summary Judgment.

Respectfully submitted,

GLOBAL NAPs SOUTH, INC.

By:

Susan M. Shanaman
212 North Third Street, Suite 203
Harrisburg, Pennsylvania 17101
717-236-2055

Christopher W. Savage
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
202-659-9750

William J. Rooney, Jr
General Counsel, Global NAPs South, Inc.
Ten Merrymount Road
Quincy, MA 02169
617-507-5111

Dated: January 13, 1999

INDEX TO NEW MATTER

Item #1 Complete copy of BA/MFS Agreement

Item #2 New Jersey Arbitrator Recommended Decision

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Dated as of July 16, 1996

by and between

BELL ATLANTIC-PENNSYLVANIA, INC.

and

MFS INTELENET OF PENNSYLVANIA, INC.

RECEIVED
96 JUL 17 PM 3:38
PA. P. U. C.
INFO. CONTROL DIV.

DOCKETED
JUL 18 1996

**DOCUMENT
FOLDER**

TABLE OF CONTENTS

	<u>Page</u>
1.0 DEFINITIONS	2
2.0 INTERPRETATION AND CONSTRUCTION	10
3.0 INTERCONNECTION ACTIVATION DATES AND IMPLEMENTATION SCHEDULE	11
4.0 INTERCONNECTION PURSUANT TO SECTION 251(c)(2)	11
4.1 Scope	12
4.2 Physical Architecture	13
4.3 Initial Architecture	13
4.4 Interconnection in Additional LATAs	14
4.5 Interconnection Points for Different Types of Traffic	15
5.0 TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC PURSUANT TO SECTION 251(c)(2)	15
5.1 Scope of Traffic	15
5.2 Trunk Group Architecture and Traffic Routing	15
5.3 Additional Switching System Hierarchy and Trunking Requirements	15
5.4 Signaling	16
5.5 Grades of Service	16
5.6 Measurement and Billing	16
5.7 Reciprocal Compensation Arrangements -- Section 251(b)(5)	17
6.0 TRANSMISSION AND ROUTING OF EXCHANGE ACCESS TRAFFIC PURSUANT TO 251(c)(2)	18
6.1 Scope of Traffic	18
6.2 Trunk Group Architecture and Traffic Routing	18
6.3 Meet-Point Billing Arrangements	19
6.4 800/888 Traffic	21
7.0 TRANSPORT AND TERMINATION OF OTHER TYPES OF TRAFFIC	22
7.1 Information Services Traffic	22
7.2 LSV/VCI Traffic	23
7.3 Transit Service	24
7.4 911/E911 Arrangements	25
7.5 Ancillary Traffic Generally	26
8.0 NUMBER RESOURCES, RATE CENTERS, AND RATING POINTS	26

9.0	NETWORK MAINTENANCE AND MANAGEMENT; OUTAGES	27
9.3	Interference or Impairment	27
9.4	Repeated or Willful Noncompliance	28
9.5	Outage Repair Standard	28
9.6	Notice of Changes -- Section 251(c)(5)	28
10.0	JOINT NETWORK RECONFIGURATION AND GROOMING PLAN AND INSTALLATION, MAINTENANCE, TESTING AND REPAIR	28
10.1	Joint Network Reconfiguration and Grooming Plan	28
10.2	Installation, Maintenance, Testing and Repair	29
10.3	Forecasting Requirements for Trunk Provisioning	29
11.0	UNBUNDLED ACCESS -- SECTION 251(c)(3)	30
11.1	Unbundled Local Loop (ULL) Transmission Types	30
11.2	Port Types	31
11.3	Trunk Side Local Transport	32
11.4	Limitations on Unbundled Access	32
11.5	Availability of Other Network Elements on an Unbundled Basis	33
11.6	Provisioning of Unbundled Local Loops	33
11.7	Maintenance of Unbundled Local Loops	35
11.8	Rates and Charges	35
12.0	RESALE -- SECTIONS 251(c)(4) and 251(b)(1)	35
12.1	Availability of Retail Rates for Resale	35
12.2	Availability of Wholesale Rates for Resale	35
13.0	COLLOCATION -- SECTION 251(c)(6)	36
14.0	NUMBER PORTABILITY -- SECTION 251(b)(2)	37
14.1	Scope	37
14.2	Procedures for Providing INP Through Remote Call Forwarding	38
14.3	Procedures for Providing INP Through Direct Inward Dial Trunks (Flex-DID)	39
14.4	Procedures for Providing LTNP Through Full NXX Code Migration	39
14.5	Receipt of Terminating Compensation on Traffic to INP'ed Numbers	39
14.6	Recovery of INP Costs Pursuant to FCC Order and Rulemaking	40
15.0	DIALING PARITY -- SECTION 251(b)(3)	41
16.0	ACCESS TO RIGHTS-OF-WAY -- SECTION 251(b)(4)	41
17.0	DATABASES AND SIGNALING	41
18.0	COORDINATED SERVICE ARRANGEMENTS	42

18.1	Intercept and Referral Announcements	42
18.2	Coordinated Repair Calls	43
18.3	Customer Authorization	43
19.0	DIRECTORY SERVICES ARRANGEMENTS	43
19.1	Directory Listings and Directory Distributions	44
19.2	Yellow Page Maintenance	45
19.3	Service Information Pages	45
19.4	Directory Assistance (DA); Call Completion	46
20.0	COORDINATION WITH TARIFF TERMS	46
21.0	INSURANCE	46
22.0	TERM AND TERMINATION	47
23.0	DISCLAIMER OF REPRESENTATIONS AND WARRANTIES	48
24.0	CANCELLATION CHARGES	48
25.0	INDEMNIFICATION	48
26.0	LIMITATION OF LIABILITY	49
27.0	PERFORMANCE STANDARDS FOR SPECIFIED ACTIVITIES	50
27.1	Certain Definitions	50
27.2	Performance Standards	51
27.3	Limitations	51
27.4	Service Quality Standards	52
27.5	Records	52
28.0	COMPLIANCE WITH LAWS; REGULATORY APPROVAL	52
29.0	MISCELLANEOUS	53
29.1	Authorization	53
29.2	Independent Contractor	53
29.3	Force Majeure	54
29.4	Confidentiality	54
29.5	Choice of Law	55
29.6	Taxes	55
29.7	Assignment	57
29.8	Billing and Payment; Disputed Amounts	57
29.9	Dispute Resolution	58
29.10	Notices	59
29.11	Section 252(i) Obligations	59

29.12	Joint Work Product	60
29.13	No Third Party Beneficiaries; Disclaimer of Agency	61
29.14	No License	61
29.15	Technology Upgrades	61
29.16	Survival	62
29.17	Entire Agreement	62
29.18	Counterparts	62
29.19	Modification, Amendment, Supplement or Waiver	62
29.20	Successors and Assigns	62
29.21	Publicity	62

LIST OF SCHEDULES AND EXHIBITS

Schedules

Schedule 1.0	Certain Terms As Defined in the Act, As of July 16, 1996
Schedule 3.0	Implementation Schedule
Schedule 4.0	Interconnection Points in LATA
Schedule 4.2	Physical Architecture Diagram
Schedule 4.3	Initial Architecture Diagram
Schedule 4.5	Interconnection Points for Different Types of Traffic
Schedule 6.3	Rate Elements Under Meet Point Billing
Schedule 27.0	Performance Interval Dates for Specified Activities
Schedule 27.1	MFS Service Quality Standards

Exhibits

Exhibit A	Detailed Schedule of Itemized Charges
Exhibit B	Network Element Bona Fide Request
Exhibit C	Directory Assistance and Call Completion Services Agreement

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, is effective as of the 16th day of July, 1996 (the "Effective Date"), by and between Bell Atlantic-Pennsylvania, Inc. ("BA"), a Pennsylvania corporation with offices at 1717 Arch Street, 32nd Floor, Philadelphia, Pennsylvania 19103, and MFS Intelenet of Pennsylvania, Inc. ("MFS"), a Delaware corporation with offices at 33 Whitehall Street, 15th Floor, New York, New York 10004.

WHEREAS, the Parties want to interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services, Switched Exchange Access Services, and other Telecommunications Services (all as defined below) to their respective customers;

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Act (as defined below) and additional services as set forth herein; and

WHEREAS, Sections 251, 252, and 271 of the Telecommunications Act of 1996 have specific requirements for interconnection, unbundling, and service resale, commonly referred to as the "Checklist", and the Parties intend that this Agreement meet those Checklist requirements.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MFS and BA hereby agree as follows:

This Agreement sets forth the terms, conditions and pricing under which BA and MFS (individually, a "Party" and collectively, the "Parties") will offer and provide to each other network Interconnection, access to Network Elements, ancillary services, and wholesale Telecommunications Services available for resale within each LATA in which they both operate within Pennsylvania. As such, this Agreement is an integrated package that reflects a balancing of interests critical to the Parties. It will be submitted to the Pennsylvania Public Utility Commission and the Parties will specifically request that the Commission refrain from taking any action to change, suspend or otherwise delay implementation of the Agreement. So long as the Agreement remains in effect, neither Party shall advocate before any legislative, regulatory, or other public forum that any term of this Agreement be modified or eliminated, unless otherwise mutually agreed by the Parties.

1.0 DEFINITIONS.

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0. For convenience of reference only, the definitions of certain terms that are As Defined in the Act (as defined below) are set forth on Schedule 1.0.

1.1 "Act" means the Communications Act of 1934 (47 U.S.C. 151 *et. seq.*), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

1.2 "ADSL" or "Asymmetrical Digital Subscriber Line" means a transmission technology which transmits an asymmetrical digital signal of up to 6 mbps to the Customer and up to 640 kbps from the Customer.

1.3 [Reserved]

1.4 "Agreement" means this Interconnection Agreement under Sections 251 and 252 of the Act and all Exhibits and Schedules appended hereto.

1.5 "Ancillary Traffic," means all traffic that is destined for ancillary services, or that may have special billing requirements, including but not limited to the following: LSV/VCI, Directory Assistance, 911/E911, Operator Services (call completion), 800/888 database query, LIDB, and information services requiring special billing.

1.6 "As Defined in the Act" means as specifically defined by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

1.7 "As Described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

1.8 "Automatic Number Identification" or "ANI" means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.

1.9 "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter which refers to the number transmitted through a network identifying the calling party.

1.10 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

(a) "End Office Switch" or "End Office" which is used to terminate Customer station Loops for the purpose of interconnection to each other and to trunks; and

(b) "Tandem Switch" or "Tandem Office" which is a switching entity that is used to connect and switch trunk circuits between and among End Office Switches and between and among End Office Switches and carriers' aggregation points, points of termination, or points of presence. An "Access Tandem Office" or "Access Tandem" is a Tandem Office with billing and recording capabilities that is used to provide Switched Exchange Access Services.

A Central Office Switch may also be employed as a combination End Office/Tandem Office Switch.

1.11 [Reserved]

1.12 "CLASS Features" means certain CCS-based features available to Customers including, but not limited to: Automatic Call Back; Call Trace; Caller Identification, and future offerings.

1.13 "Collocation" means an arrangement whereby one Party's (the "Collocating Party") facilities are terminated in equipment necessary for Interconnection or for access to Network Elements offered by the second Party on an unbundled basis that has been installed and maintained at the premises of a second Party (the "Housing Party"). For purposes of Collocation, the "premises" of a Housing Party is limited to a Housing Party Wire Center, other mutually agreed-upon locations of the Housing Party, or any other location for which Collocation has been ordered by the FCC or Commission. Collocation may be "physical" or "virtual". In "Physical Collocation," the Collocating Party installs and maintains its own equipment in the Housing Party's premises. In "Virtual Collocation," the Housing Party owns, installs, and maintains equipment dedicated to use by the Collocating Party in the Housing Party's premises. BA currently provides Collocation under terms, rates, and conditions as described in tariffs on file or soon to be filed with the FCC and the Commission. Upon request by either Party, BA and MFS will address the provision of additional types of Collocation arrangements, including additional physical locations and alternative utilizations of space and facilities.

1.14 "Commission" means the Pennsylvania Public Utility Commission.

1.15 "Common Channel Signaling" or "CCS" means a method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data traffic of the call. "SS7" means the common channel out of band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph ("CCITT") and the American National Standards Institute ("ANSI"). BA and MFS currently utilize this out-of-band signaling protocol. "CCSAC" or "CCSAS" means the common channel signaling access connection or service, respectively, which connects one Party's signaling point of interconnection ("SPOI") to the other Party's STP for the exchange of SS7 messages.

1.16 "Competing Local Exchange Carrier" or "CLEC" means any Local Exchange Carrier other than BA, operating as such in BA's certificated territory in Pennsylvania. MFS is or will shortly become a CLEC.

1.17 "Cross Connection" means a jumper cable or similar connection provided pursuant to Collocation at the digital signal cross connect, Main Distribution Frame or other suitable frame or panel between (i) the Collocating Party's equipment and (ii) the equipment or facilities of the Housing Party.

1.18 "Customer" means a third-party residence or business subscriber to Telecommunications Services provided by either of the Parties.

1.19 "Dialing Parity" is As Defined in the Act.

1.20 "Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

1.21 "Digital Signal Level 0" or "DS0" means the 64 Kbps zero-level signal in the time-division multiplex hierarchy.

1.22 "Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.

1.23 "Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

1.24 "Exchange Access" is As Defined in the Act.

1.25. "Exchange Message Record" or "EMR" means the standard used for exchange of telecommunications message information among Local Exchange Carriers for billable, non-billable, sample, settlement, and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Bell Communications Research, Inc. ("Bellcore") document that defines industry standards for Exchange Message Records.

1.26 [Reserved]

1.27 "FCC" means the Federal Communications Commission.

1.28 "HDSL" or "High-Bit Rate Digital Subscriber Line" means a transmission technology which transmits up to 784 kbps simultaneously in both directions on a two-wire channel using a 2 Binary / 1 Quaternary ("2B1Q") line code.

1.29 "Independent Telephone Company" or "ITC" means any entity other than BA which, with respect to its operations within the Commonwealth of Pennsylvania, is an "Incumbent Local Exchange Carrier" As Described in the Act.

1.30 "Information Service Traffic" means Local Traffic or IntraLATA Toll Traffic which originates on a Telephone Exchange Service line and which is addressed to an information service provided over a Party's information services platform (e.g., 540, 550, 556, 846, 936, and 970).

1.31 "Integrated Digital Loop Carrier" means a subscriber loop carrier system which integrates within the switch at a DS1 level that is twenty-four (24) loop transmission paths combined into a 1.544 Mbps digital signal.

1.32. "Integrated Services Digital Network" or "ISDN" means a switched network service providing end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN ("BRI-ISDN") provides for digital transmission of two 64 kbps bearer channels and one 16 kbps data and signaling channel (2B+D). Primary Rate Interface-ISDN ("PRI-ISDN") provides for digital transmission of twenty three (23) 64 kbps bearer channels and one 16 kbps data and signaling channel (23 B+D).

1.33 "Interconnection" is as Described in the Act, and means the connection of separate pieces of equipment or transmission facilities within, between, or among networks. The architecture of Interconnection may include, but is not limited to, Collocation Arrangements, entrance facilities, and Mid-Span Meet arrangements.

1.34 "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.

1.35 "Interim Number Portability" or "INP" means the use of existing and available call routing, forwarding, and addressing capabilities (e.g. remote call forwarding) to enable a Customer to receive Telephone Exchange Service provided by any Local Exchange Carrier operating within the exchange area with which the Customer's telephone number(s) is associated, without having to change the telephone number presently assigned to the Customer and regardless of whether the Customer's chosen Local Exchange Carrier is the carrier that originally assigned the number to the Customer.

1.36 "InterLATA" is As Defined in the Act.

1.37 "IntraLATA Toll Traffic" means those intraLATA calls that are not defined as Local Traffic in this Agreement.

1.38 "Line Side" means an End Office Switch connection that provides transmission, switching and optional features suitable for Customer connection to the public switched network, including loop start supervision, ground start supervision, and signaling for basic rate ISDN service.

1.39. "Line Status Verification" or "LSV" means an operator request for a status check on the line of a called party. The request is made by one Party's operator to an operator of the other Party. The verification of the status check is provided to the requesting operator.

1.40 "Local Access and Transport Area" or "LATA" is As Defined in the Act.

1.41 "Local Exchange Carrier" or "LEC" is As Defined in the Act. The Parties to this Agreement are or will shortly become Local Exchange Carriers.

1.42. "Local Serving Wire Center" means a Wire Center that (i) serves the area in which the other Party's or a third party's Wire Center, aggregation point, point of termination, or point of presence is located, or any Wire Center in the LATA in which the other Party's Wire Center, aggregation point, point of termination or point of presence is located in which the other Party has established a Collocation Arrangement or is purchasing an entrance facility, and (ii) has the necessary multiplexing capabilities for providing transport services.

1.43 "Local Telephone Number Portability" or "LTNP" means "number portability" As Defined in the Act.

1.44 "Local Traffic," means traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area, as defined in BA's effective Customer tariffs. Local Traffic does not include traffic originated or terminated by a commercial mobile radio service carrier.

1.45. "Main Distribution Frame" or "MDF" means the primary point at which outside plant facilities terminate within a Wire Center, for interconnection to other telecommunications facilities within the Wire Center.

1.46. "MECAB" means the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an Exchange Access service provided by two or more LECs, or by one LEC in two or more states, within a single LATA.

1.47 "MECOD" means the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee under the auspices of OBF. The MECOD document, published by Bellcore as Special Report SR-STS-002643, establishes methods for processing orders for Exchange Access service which is to be provided by two or more LECs.

1.48 "Meet-Point Billing" or "MPB" means an arrangement whereby two or more LECs jointly provide to a third party the transport element of a Switched Exchange Access Service to one

of the LECs' End Office Switches, with each LEC receiving an appropriate share of the transport element revenues as defined by their effective Exchange Access tariffs. "Meet-Point Billing Traffic" means traffic that is subject to an effective Meet-Point Billing arrangement.

1.49. "Mid-Span Meet" means an Interconnection architecture whereby two carriers' fiber transmission facilities meet at a mutually agreed-upon Interconnection point.

1.50 "Multiple Bill/Single Tariff" or "Multiple Bill/Multiple Tariff" means the MPB method whereby each LEC prepares and renders its own meet point bill in accordance with its own Tariff(s) for the portion of the jointly-provided Switched Exchange Access Service which the LEC provides.

1.51 "Network Element" is As Defined in the Act.

1.52 "Network Element Bona Fide Request" means the process described on Exhibit B that prescribes the terms and conditions relating to a Party's request that the other Party provide a Network Element not otherwise provided by the terms of this Agreement.

1.53 "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.

1.54. "Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. There are two general categories of NPAs, "Geographic NPAs" and "Non-Geographic NPAs." A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code," is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas; 800, 900, 700, 500 and 888 are examples of Non-Geographic NPAs.

1.55 "NXX," "NXX Code," or "End Office Code" means the three digit switch entity indicator (i.e. the first three digits of a seven digit telephone number).

1.56 "Permanent Number Portability" or "PNP" means the use of a database or other technical solution that comports with regulations issued by the FCC to provide LTNP for all customers and service providers.

1.57 "Port Element" or "Port" means a line card (or equivalent) and associated peripheral equipment on an End Office Switch which serves as the Interconnection between individual loops or individual Customer trunks and the switching components of an End Office Switch and the associated switching functionality in that End Office Switch. Each Port is typically associated with one (or more) telephone number(s) which serves as the Customer's network address.

1.58 "Rate Center Area" or "Exchange Area" means the specific geographic point and corresponding geographic area which has been identified by a given LEC as being associated with a particular NPA-NXX code assigned to the LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area which the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area. A "Rate Center Point" is a specific geographic point, defined by a V&H coordinate, located within the Rate Center Area and used to measure distance for the purpose of billing Customers for distance-sensitive Telephone Exchange Services and Toll Traffic.

1.59 "Rate Demarcation Point" means the point of minimum penetration at the Customer's premises or other point, as defined in a Party's Tariffs, where network access recurring charges and LEC responsibility ends and beyond which Customer responsibility begins.

1.60 "Rating Point" or "Routing Point" means a specific geographic point identified by a specific V&H coordinate. The Rating Point is used to route inbound traffic to specified NPA-NXXs and to calculate mileage measurements for distance-sensitive transport charges of switched access services. Pursuant to Bellcore Practice BR-795-100-100, the Rating Point may be an End Office location, or a "LEC Consortium Point of Interconnection." Pursuant to that same Bellcore Practice, examples of the latter shall be designated by a common language location identifier (CLLI) code with (x)KD in positions 9, 10, 11, where (x) may be any alphanumeric A-Z or 0-9. The Rating Point/Routing Point must be located within the LATA in which the corresponding NPA-NXX is located. However, the Rating Point/Routing Point associated with each NPA-NXX need not be the same as the corresponding Rate Center Point, nor must it be located within the corresponding Rate Center Area, nor must there be a unique and separate Rating Point corresponding to each unique and separate Rate Center.

1.61 "Reciprocal Compensation" is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Local Traffic originating on one Party's network and terminating on the other Party's network.

1.62 "Service Control Point" or "SCP" means the node in the common channel signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a service switching point and via a Signaling Transfer Point, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.

1.63 "Signaling Transfer Point" or "STP" means a specialized switch that provides SS7 network access and performs SS7 message routing and screening.

1.64 "Switched Access Detail Usage Data" means a category 1101XX record as defined in the EMR Bellcore Practice BR-010-200-010.

1.65 "Switched Access Summary Usage Data" means a category 1150XX record as defined in the EMR Bellcore Practice BR-010-200-010.

1.66 "Switched Exchange Access Service" means the offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access, and 900 access.

1.67 "Synchronous Optical Network" or "SONET" means an optical interface standard that allows inter-networking of transmission products from multiple vendors. The base rate is 51.84 Mbps (OC-1/STS-1) and higher rates are direct multiples of the base rate, up to 13.22 Gpbs.

1.68 "Tariff" means any applicable federal or state tariff of a Party, or standard agreement or other document that sets forth the generally available terms and conditions under which a Party offers a particular service, facility, or arrangement.

1.69 "Technically Feasible Point" is As Described in the Act.

1.70 "Telecommunications" is As Defined in the Act.

1.71 "Telecommunications Act" means the Telecommunications Act of 1996 and any rules and regulations promulgated thereunder.

1.72 "Telecommunications Carrier" is As Defined in the Act.

1.73 "Telecommunications Service" is As Defined in the Act.

1.74 "Telephone Exchange Service," sometimes also referred to as "Exchange Service," is As Defined in the Act. Telephone Exchange Service generally provides the Customer with a telephonic connection to, and a unique telephone number address on, the public switched telecommunications network, and enables such Customer to place or receive calls to all other stations on the public switched telecommunications network.

1.75. "Toll Traffic" means traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that Party's network and is not Local Traffic or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic," depending on whether the originating and terminating points are within the same LATA.

1.76 "Transit Traffic" means any traffic that originates from or terminates at MFS's network, "transits" BA's network substantially unchanged, and terminates to or originates from a third carrier's network, as the case may be. "Transit Traffic Service" provides MFS with the ability to use its connection to a BA Access Tandem Switch for the delivery of calls which originate or terminate with MFS and terminate to or originate from a carrier other than BA, such as another CLEC, a LEC other than BA, or a wireless carrier. In these cases, neither the originating nor terminating Customer is a Customer of BA. This service is provided through BA's Access Tandem

Switches. "Transit Traffic" and "Transit Traffic Service" do not include or apply to traffic that is subject to an effective Meet-Point Billing arrangement.

1.77 "Trunk Side" means a Central Office Switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity (e.g. another carrier's network). Trunk Side connections offer those transmission and signaling features appropriate for the connection of switching entities.

1.78 "Unbundled Local Loop Element" or "ULL" means a transmission path that extends from a Main Distribution Frame, DSX-panel, or functionally comparable piece of equipment in the Customer's serving End Office to the Rate Demarcation Point (or network interface device (NID) if installed) in or at a Customer's premises. The actual loop transmission facilities used to provide an ULL may utilize any of several technologies.

1.79 "Verification with Call Interruption" or "VCI" means a service that may be requested and provided when Line Status Verification has determined that a line is busy due to an ongoing call. VCI is an operator interruption of that ongoing call to inform the called party that a calling party is seeking to complete his or her call to the called party.

1.80 "Voice Grade" means either an analog signal of 300 to 3000 Hz or a digital signal of 56/64 kilobits per second. When referring to digital voice grade service (a 56/64 kbps channel), the terms "DS-0" or "sub-DS-1" may also be used.

1.81 "Wire Center" means a building or portion thereof in which a Party has the exclusive right of occupancy and which serves as a Routing Point for Switched Exchange Access Service.

2.0 INTERPRETATION AND CONSTRUCTION.

2.1 All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including BA or other third party offerings, guides or practices), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, or rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

2.2 Subject to the terms set forth in Section 20, each Party hereby incorporates by reference those provisions of its tariffs that govern the provision of any of the services or facilities provided hereunder. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree to negotiate in good faith to reconcile and resolve such conflict. If any provision contained in this main body of the Agreement and any Exhibit hereto cannot be reasonably construed or interpreted to avoid conflict, the